

Court of Appeals, State of Michigan

ORDER

People of MI v Oussama Talao Othman

Docket No. 281625

LC No. 05-010371-01

Kurtis T. Wilder
Presiding Judge

Brian K. Zahra

Kirsten Frank Kelly
Judges

On November 14, 2007, this Court issued an order vacating the trial court's August 21, 2007, amended judgment of sentence and remanding for an articulation of the authority upon which the court relied in modifying defendant's sentence. This Court also retained jurisdiction. The court reporter subsequently filed transcripts as directed by this Court, and at the remand proceeding conducted on February 1, 2008, the trial court cited MCR 6.435(A) as authority.

In lower court number 05-009908, defendant was charged with fourth-degree criminal sexual conduct, MCL 750.520e, and being an habitual offender, third offense, and in lower court number 05-010371, defendant was charged with operating a motor vehicle while impaired, third offense, MCL 257.625(1) and (9)(c). At a hearing conducted on November 3, 2005, for the OWI charge, the trial court stated a *Cobbs* evaluation of probation, with 30 days in the county jail and other conditions, and defendant entered a plea to the charge. Defendant also entered a plea to the CSC charge without a *Cobbs* evaluation. At the November 18, 2005, sentencing, the trial court sentenced defendant eight months to two years' imprisonment on the CSC conviction, to run "concurrent with the OWI." However, the trial court never articulated the sentence for the OWI conviction on the record, although the court did not indicate that it intended to deviate from the *Cobbs* evaluation. In any event, the original judgment of sentence for the OWI conviction reflects a sentence of eight months to two years' imprisonment. This sentence does not conform to the minimum and maximum sentences set forth under MCL 257.625(9)(c)(i). But, more importantly, the record does not support the conclusion that this sentence was imposed for the OWI conviction. The trial court properly exercised its authority to correct clerical mistakes pursuant to MCR 6.435(A). Still, we must REMAND this matter for correction of the trial court's failure to articulate a sentence on the OWI conviction at sentencing and for the entry of the appropriate and conforming orders.

The delayed application for leave to appeal and the motion to review bail and to enforce this Court's order are DENIED. The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 28 2008

Date

Sandra Schultz Mengel
Chief Clerk